

48A C.J.S. Judges § 225

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VIII. Liabilities

B. Nature and Scope of Acts and Functions

§ 225. Nonofficial acts

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West's Key Number Digest

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The rule which exempts a judge from civil liability for the judge's judicial acts does not apply to administrative, legislative, or executive functions.

The broad doctrine of judicial immunity does not apply to acts which are not judicial.¹ Judicial immunity does not extend to judges' administrative, legislative, or executive functions² or to acts which are purely ministerial in character.³ Hence, when a judge acts ministerially or is required to do a ministerial act, the judge is responsible for error or misconduct in like manner and to the same extent as all other ministerial officers.⁴ A judge is so liable whether he or she acts personally or through a clerk whom he or she has authorized to perform the act.⁵ Also, failure of a judge to perform the ministerial duties imposed on his or her office may result in liability for any damage resulting from such failure.⁶

However, the question whether a ministerial act is one which the judge is under a duty to perform is a judicial question, for the determination of which the judge is immune from liability.⁷ In any event, when a judge is performing a nonjudicial function, the judge may enjoy a qualified good-faith immunity from civil action⁸ or invoke a limited waiver of sovereign immunity for alleged negligence in the performance of ministerial duties.⁹

A judge's involvement in initiating a criminal prosecution or a civil contempt proceeding may constitute nonjudicial acts exposing him to liability.¹⁰ The test to be applied in such case is whether initiating accusatory processes is a function normally performed by a judicial officer.¹¹

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Footnotes

- 1 U.S.—*Pyle v. Hatley*, 239 F. Supp. 2d 970 (C.D. Cal. 2002).
 Fla.—*Kalmanson v. Lockett*, 848 So. 2d 374 (Fla. 5th DCA 2003).
- 2 U.S.—*Edwards v. Wilkinson*, 233 F. Supp. 2d 34 (D.D.C. 2002), *aff'd*, 2003 WL 1907995 (D.C. Cir. 2003).
Code of conduct for attorneys
 Judicial immunity is not extended to judges acting to promulgate a code of conduct for attorneys; while the issuance of a bar code is a proper function of the court, propounding such a code is not an act of adjudication but one of rulemaking.
 U.S.—*Forrester v. White*, 484 U.S. 219, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988); *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 100 S. Ct. 1967, 64 L. Ed. 2d 641 (1980).
- 3 U.S.—*Shore v. Howard*, 414 F. Supp. 379 (N.D. Tex. 1976).
 Iowa—*Huendling v. Jensen*, 168 N.W.2d 745 (Iowa 1969).
 Utah—*Logan City v. Allen*, 86 Utah 375, 44 P.2d 1085 (1935).
 Character of functions as ministerial or judicial, see § 144.
Routine matters
 As respects question of the existence of judicial immunity, routine matters which may be performed by a clerk are ministerial.
 Iowa—*Huendling v. Jensen*, 168 N.W.2d 745 (Iowa 1969).
- 4 U.S.—*Fain v. Hall*, 463 F. Supp. 661 (M.D. Fla. 1979).
 Utah—*Allen v. Holbrook*, 103 Utah 319, 135 P.2d 242 (1943), *opinion modified on other grounds on reh'g*, 103 Utah 599, 139 P.2d 233 (1943).
- 5 Ala.—*Rowe v. Johnson*, 214 Ala. 510, 108 So. 604 (1926).

- 6 Tex.—*Heyn v. Massachusetts Bonding & Insurance Co.*, 110 S.W.2d 261 (Tex. Civ. App. Dallas 1937), writ dismissed w.o.j., (Jan. 12, 1938).
- 7 Ariz.—*Davis v. Burris*, 51 Ariz. 220, 75 P.2d 689 (1938).
- 8 U.S.—*Atcherson v. Siebenmann*, 458 F. Supp. 526 (S.D. Iowa 1978), vacated in part on other grounds, 605 F.2d 1058 (8th Cir. 1979).
- 9 Ky.—*Greene v. Com.*, 349 S.W.3d 892 (Ky. 2011).
- 10 U.S.—*Sevier v. Turner*, 742 F.2d 262 (6th Cir. 1984).
- 11 U.S.—*Sevier v. Turner*, 742 F.2d 262 (6th Cir. 1984).

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